

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

VOIP-PAL.COM, INC.

Plaintiff,

v.

FACEBOOK, INC, and
WHATSAPP, INC.

Defendants.

CIVIL ACTION NO. 6:21-cv-665-ADA

VOIP-PAL.COM, INC.

Plaintiff,

v.

GOOGLE LLC,

Defendant.

CIVIL ACTION NO. 6:21-cv-667-ADA

VOIP-PAL.COM, INC.

Plaintiff,

v.

AMAZON.COM, INC.;
AMAZON.COM SERVICES LLC; and
AMAZON WEB SERVICES, INC.,

Defendants.

CIVIL ACTION NO. 6:21-cv-668-ADA

VOIP-PAL.COM, INC.

Plaintiff,

v.

VERIZON COMMUNICATIONS, INC.;
CELLCO PARTNERSHIP d/b/a VERIZON
WIRELESS;
VERIZON SERVICES, CORP.; and
VERIZON BUSINESS NETWORK
SERVICES, INC.,

Defendants.

CIVIL ACTION NO. 6:21-cv-672-ADA

VOIP-PAL.COM, INC.

Plaintiff,

v.

T-MOBILE US, INC.; and
T-MOBILE USA, INC.

Defendants.

CIVIL ACTION NO. 6:21-cv-674-ADA

SCHEDULING ORDER

On September 14, 2021, the parties filed their respective Joint Case Readiness Status Report in each of the above-identified cases. As such, the Case Management Conference (CMC) is deemed to have been held for calendaring purposes on September 28, 2021. After meeting and conferring, the parties jointly submitted the following proposed schedule to be entered in these cases. Accordingly, the Court enters the following schedule:

<u>Date</u>	<u>Event</u>
October 19, 2021	Plaintiff shall serve preliminary ¹ infringement contentions in the form of a chart setting forth where in the accused product(s) each element of the asserted claim(s) are found. Plaintiff shall also identify the priority date (i.e., the earliest date of invention) for each asserted claim and produce: (1) a copy of the file history for each patents in suit
November 2, 2021	<p>The Parties shall submit an agreed Scheduling Order. If the parties cannot agree, the parties shall submit a separate Joint Motion for entry of Scheduling Order briefly setting forth their respective positions on items where they cannot agree. Absent agreement of the parties, the Plaintiff shall be responsible for the timely submission of this and other Joint filings.</p> <p>Plaintiff shall also produce: (1) all documents evidencing conception and reduction to practice for each claimed invention, and (2) a copy of the file history for each patent in suit. If Plaintiff has not</p>

¹ The parties may amend preliminary infringement contentions and preliminary invalidity contentions without leave of court so long as counsel certifies that it undertook reasonable efforts to prepare its preliminary contentions and the amendment is based on material identified after those preliminary contentions were served, and should do so seasonably upon identifying any such material. Any amendment to add patent claims requires leave of court so that the Court can address any scheduling issues.

<u>Date</u>	<u>Event</u>
	voluntarily waived privilege as to documents evidencing conception and reduction to practice for each claimed invention by this date, it shall be precluded from relying on the content of the privileged documents for the purpose of establishing an invention date earlier than the priority date of the patents in these cases. ²³
January 25, 2022	Defendant shall serve preliminary invalidity contentions in the form of (1) a chart setting forth where in the prior art references each element of the asserted claim(s) are found, (2) an identification of any limitations the Defendant contends are indefinite or lack written description under section 112, and (3) an identification of any claims the Defendant contends are directed to ineligible subject matter under section 101. Defendant shall also produce (1) all prior art referenced in the invalidity contentions and (2) technical documents, including software where applicable, sufficient to show the operation of the accused product(s).
February 8, 2022	Parties exchange claim terms for construction.
February 22, 2022	Parties exchange proposed claim constructions.

² Plaintiff did not provide any documents evidencing conception and reduction to practice with its preliminary infringement contentions. Rather, Plaintiff claimed that these documents were privileged. Defendants maintain their objection to Plaintiff relying on privileged material to try to establish conception and/or reduction to practice.

³ VoIP-Pal states that, at this time, VoIP-Pal has not identified any non-privileged documents evidencing conception and reduction to practice that it intends to rely on to establish an earlier date of invention. VoIP-Pal intends to identify its conception and reduction to practice documents on a privilege log and will produce this log by the agreed November 2 deadline. VoIP-Pal is willing to waive privilege as to one or more of the documents identified on VoIP-Pal's privilege log if the parties can reach agreement on the scope of the waiver. If VoIP-Pal later discovers other documents evidencing conception and reduction to practice not listed on its privilege log, then, to the extent necessary, VoIP-Pal will follow the Court's procedures for amending its preliminary infringement contentions.

<u>Date</u>	<u>Event</u>
March 1, 2022	Parties disclose extrinsic evidence. The parties shall disclose any extrinsic evidence, including the identity of any expert witness they may rely upon with respect to claim construction or indefiniteness. With respect to any expert identified, the parties shall identify the scope of the topics for the witness's expected testimony. ⁴ With respect to items of extrinsic evidence, the parties shall identify each such item by production number or produce a copy of any such item if not previously produced.
March 8, 2022	Deadline to meet and confer to narrow terms in dispute and exchange revised list of terms/constructions.
March 8, 2022	Defendant files Opening claim construction brief, including any arguments that any claim terms are not indefinite.
April 5, 2022	Plaintiff files Responsive claim construction brief.
April 19, 2022	Defendant files a Reply claim construction brief.
May 3, 2022	Plaintiff files a Sur-Reply claim construction brief
May 6, 2022	Parties submit Joint Claim Construction Statement. <i>See General Issues Note #9 regarding providing copies of the briefing to the Court and the technical adviser (if appointed).</i>

⁴ Any party may utilize a rebuttal expert in response to a brief where expert testimony is relied upon by the other party.

<u>Date</u>	<u>Event</u>
May 10, 2022	Parties submit optional technical tutorials to the Court and technical adviser (if appointed). ⁵
May 17, 2022	<i>Markman</i> Hearing at 9:00 a.m. This date is a placeholder, and the Court may adjust this date as the <i>Markman</i> hearing approaches.
May 18, 2022	Fact Discovery opens; deadline to serve Initial Disclosures per Rule 26(a)
June 28, 2022	Deadline to add parties.
July 12, 2022	<p>Deadline to serve Final Infringement and Invalidity Contentions. After this date, leave of Court is required for any amendment to Infringement or Invalidity contentions.</p> <p>This deadline does not relieve the Parties of their obligation to seasonably amend if new information is identified after initial contentions.</p>
September 6, 2022	Deadline to amend pleadings. A motion is not required unless the amendment adds patents or patent claims. (Note: This includes amendments in response to a 12(c) motion.)
November 15, 2022	Deadline for the first of two meet and confers to discuss significantly narrowing the number of claims asserted and prior art references at issue. Unless the parties agree to the narrowing, they are ordered to contact the Court's Law Clerk to arrange a teleconference with the Court to resolve the disputed issues.
December 2, 2022	Close of Fact Discovery.
December 9, 2022	Opening Expert Reports.

⁵ The parties should contact the law clerk to request a Box link so that the party can directly upload the file to the Court's Box account.

<u>Date</u>	<u>Event</u>
January 10, 2023	Rebuttal Expert Reports.
February 7, 2023	Close of Expert Discovery.
February 14, 2023	Deadline for the second of two meet and confer to discuss narrowing the number of claims asserted and prior art references at issue to triable limits. To the extent it helps the parties determine these limits, the parties are encouraged to contact the Court's Law Clerk for an estimate of the amount of trial time anticipated per side. The parties shall file a Joint Report within 5 business days regarding the results of the meet and confer.
February 21, 2023	Dispositive motion deadline and <i>Daubert</i> motion deadline. See General Issues Note #9 regarding providing copies of the briefing to the Court and the technical adviser (if appointed).
March 7, 2023	Serve Pretrial Disclosures (jury instructions, exhibits lists, witness lists, discovery and deposition designations).
March 21, 2023	Serve objections to pretrial disclosures/rebuttal disclosures.
March 28, 2023	Serve objections to rebuttal disclosures; file Motions <i>in limine</i> .
April 4, 2023	File Joint Pretrial Order and Pretrial Submissions (jury instructions, exhibits lists, witness lists, discovery and deposition designations); file oppositions to motions <i>in limine</i> .
April 11, 2023	File Notice of Request for Daily Transcript or Real Time Reporting. If a daily transcript or real time reporting of court proceedings is requested for trial, the party or parties making said request shall file a notice with the Court and e-mail the Court Reporter, Kristie Davis at kmdaviscsr@yahoo.com Deadline to meet and confer regarding

<u>Date</u>	<u>Event</u>
	remaining objections and disputes on motions <i>in limine</i> .
8 weeks before trial	Parties email the Court's law clerk to confirm pretrial and trial dates
April 20, 2023	File joint notice identifying remaining objections to pretrial disclosures and disputes on motions <i>in limine</i> .
April 25, 2023	Final Pretrial Conference. The Court expects to set this date at the conclusion of the <i>Markman</i> Hearing.
May 16, 2023 ⁶	Jury Selection/Trial. The Court expects to set these dates at the conclusion of the <i>Markman</i> Hearing. ⁷

SIGNED this _____ day of _____, 2021

 ALAN D ALBRIGHT
 UNITED STATES DISTRICT JUDGE

⁶ If the actual trial date materially differs from the Court's default schedule, the Court will consider reasonable amendments to the case schedule post-*Markman* that are consistent with the Court's default deadlines in light of the actual trial date.

⁷ Defendants contend that each Defendant is entitled to have a separate trial. The parties suggest discussing trial sequencing at an appropriate time later in the case.

Dated: November 2, 2021

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of the forgoing SCHEDULING ORDER via the Court's CM/ECF system pursuant to the Federal Rules of Civil Procedure and Local Rule CV-5(b)(1) this 2nd day of November, 2021.

By: /s/Lewis E. Hudnell, III
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